

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	
DENNIS HABBEN	AMENDMENT TO ADMINISTRATIVE CONSENT ORDER
Sioux County, Iowa	NO. 2014-SW-12-A1

TO: Dennis Habben  
3562 Racine Avenue  
Dayton, IA 50530

**I. SUMMARY**

This amendment to administrative consent order No. 2014-SW-12 is entered into between the Iowa Department of Natural Resources (DNR) and Dennis Habben for the purpose of resolving violations related to the illegal stockpiling of waste tires. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

David Miller, Field Office 2  
Iowa Department of Natural Resources  
2300 15<sup>th</sup> Street SW  
Mason City IA 50401  
Phone: 641-424-4073

**Relating to legal requirements:**

Jon Tack, Attorney for the DNR  
Iowa Department of Natural Resources  
502 E 9<sup>th</sup> St.  
Des Moines, IA 50319  
Phone: 515-281-8889

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455D.23, which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of the provisions of Iowa Code chapter 455D and any rule adopted pursuant to this chapter; and Iowa Code sections 455D.22 and 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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**III. STATEMENT OF FACTS**

1. Dennis Habben is engaged in the business of collecting and transporting waste tires using the name Habben Enterprises. Mr. Habben is registered with the DNR as a tire hauler. Mr. Habben has illegally disposed of waste tires at his home at 3562 Racine Avenue, Dayton, Iowa and in a building located at 300 East First Street, Harcourt, Iowa.

2. -- 13. Paragraphs 2 through 13 of administrative consent order no. 2014-SW-12 are incorporated herein by reference.

13. Dennis Habben completed the removal of all waste tires located at his home property at 3562 Racine Avenue, Dayton, Iowa before October 1, 2014. The waste tires were partially cleaned up at the property at 300 East First Street, Harcourt, Iowa, by that date. Costs incurred through October 1, 2014 for the proper disposal of waste tires from these sites exceeded \$10,637.

14. Throughout the term of the administrative consent order, Dennis Habben maintained communications with the DNR and informed the DNR when equipment or vehicle break downs were affecting completion of the project.

15. On January 16, 2015, Dennis Habben reported to the DNR that the clean-up of all tires at the Harcourt site had been completed on January 14, 2015. On January 20, 2015 the DNR conducted site visits and confirmed compliance. At that time, documentation was provided in regard to an additional \$4,700 of expenses incurred by Dennis Habben for the proper disposal of waste tires from this site. The total costs incurred, not including any labor costs for Mr. Habben, exceeded the DNR's estimate of economic benefit at the time of entry of the administrative consent order.

**IV. CONCLUSIONS OF LAW**

1. -- 7. The Conclusions of Law set forth in paragraphs 1 through 7 of administrative consent order no. 2014-SW-12 are incorporated herein by reference.

**V. ORDER**

THEREFORE, the DNR orders and Dennis Habben agrees to the following:

**Amended Paragraph 1.** By January 15, 2015, Dennis Habben shall remove and properly dispose of every tire located at 3562 Racine Avenue, Dayton, Iowa; 300 East First Street, Harcourt, Iowa; and any other location under the ownership or control of Dennis Habben. By January 21, 2015 Dennis Habben shall provide receipts to DNR Field Office #2 which confirm the proper disposal of all tires removed pursuant to this paragraph. *Dennis Habben has complied with the provisions of this paragraph.*

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**Amended Paragraph 2.** By February 16, 2015, Dennis Habben shall pay a penalty of **\$1,500.**

**VI. PENALTY**

1. Iowa Code section 455D.25 authorizes the assessment of civil penalties of up to \$10,000 per day of violation for the waste tire stockpiling violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order. The administrative penalty is determined as follows:

Economic Benefit -- Dennis Habben has achieved an economic benefit from the violations documented herein. Mr. Habben is paid a fee to haul away and properly dispose of waste tires. Industry standards for the service provided by Mr. Habben are approximately \$2 - \$4 per passenger tire and up to \$20 for a large implement tire. Based upon the 4,000 PTEs of waste tires illegally disposed of by Mr. Habben, the economic benefit realized is expected to exceed \$12,000. Because of the additional labor involved in processing, loading and rehauling the tires to comply with the terms of this administrative consent order the economic benefit can be completely mitigated because the costs will exceed the costs which would have been incurred for disposal if the tires had not been improperly delivered to the current locations. A penalty of \$8,500 is assessed for this factor but credit of \$8,500 toward that penalty has been obtained through compliance with the waste tire removal requirements contained in Part V of administrative consent order no. 2014-SW-12. Dennis Habben has expended in excess of \$15,000 to achieve compliance.

Gravity -- One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. The illegal stockpiling of waste tires provides a refuge for mosquitoes and vermin. The stockpiling of waste tires presents a threat of fire which would result in air quality violations and potential groundwater contamination. Based upon these considerations, an amended penalty of \$1,000 is assessed for this factor.

Culpability -- Dennis Habben is in the business of hauling and properly disposing of waste tires. He is aware of the legal requirements and ignored those regulations. Mr. Habben has been provided with numerous opportunities to return to compliance and has refused to do so. Since the execution of administrative consent order no. 2014-SW-12, Mr. Habben has worked diligently to achieve compliance and has maintained communications with the DNR throughout the period of the waste tire clean-up. For these reasons, a penalty of \$500 is assessed for this factor.


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**VII. WAIVER OF APPEAL RIGHTS**

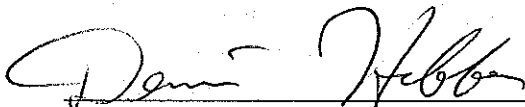
This amendment is entered into knowingly and with the consent of Dennis Habben. For that reason Dennis Habben waives his rights to appeal this amendment or any part thereof.

**VIII. NONCOMPLIANCE**

At the time of execution of this amendment, Dennis Habben has complied with all requirements of administrative consent order no. 2014-SW-12, except for the payment of the \$1,500 administrative penalty. A failure to timely pay this penalty may result in the imposition of further administrative penalties or referral to the Attorney General to obtain additional civil penalties pursuant to Iowa Code section 455D.25. Payment of the penalty assessed herein shall constitute compliance with this amendment and administrative consent order no. 2014-SW-12.

  
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CHUCK GIPP, DIRECTOR  
Iowa Department of Natural Resources

Dated this 20<sup>th</sup> day of  
February, 2015.

  
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DENNIS HABBEN

Dated this 12 day of  
Feb, 2015.

Field Office #2; V.L.C;